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August 31, 1998

CERTIFIED MAIL / RETURN RECEIPT

REQUESTED: P 448 843 927

Ms. Roberta Riccio
Remedial Project Manager
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
Region IX
75 Hawthorne Street
San Francisco, CA 94106

Re: *Indian Bend Wash Superfund Site, South Study Area, Tempe, Arizona*

Dear Ms. Riccio:

The undersigned and the law firm of Robbins & Green represent Circuit Express, Inc., 229 South Clark Drive, Tempe, Arizona 85281 ("Circuit Express"). The United States Environmental Protection Agency ("EPA") has forwarded a letter to Circuit Express indicating that there is a ground water remedy meeting for the Indian Bend Wash Superfund Site, South Study Area on August 31, 1998 and that Circuit Express is included on the list as a "groundwater stake holder." The EPA has previously provided correspondence to Circuit Express in which the EPA has indicated that Circuit Express may be a potentially responsible party ("PRP") for soil contamination. In a letter dated January 28, 1998, the EPA alleges that Circuit Express may also be a PRP for groundwater contamination. As set forth in the following sections of this letter, Circuit Express should be released from any further involvement in this Superfund investigation.

In 1980, Congress passed the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, commonly known as "Superfund," in response to public concern over the discovery of toxic waste dumps such as "Love Canal."

CERCLA established a system to identify sites where hazardous substances have been released into the environment or where this may occur in the future. At the outset, § 107(a) of CERCLA creates four basic categories of liable parties:

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1. Owners and operators of a vessel or a facility.
2. Persons who owned or operated a vessel or a facility at the time hazardous substances were deposited at the facility or from the vessel.
3. Generators of hazardous substances who arrange for a disposal directly or through a transporter.
4. Transporters of hazardous substances.

The scope and meaning of each of the categories of liable parties is clear from the language of the statute. For example, even if a person owns or operates a facility, it is not merely the ownership that must be proven but also ownership or operation, "at the time hazardous substances were deposited at the facility." In this regard, the critical element of a cause of action under § 107 is lacking where it can be shown that none of the wastes of the PRP were part of the release. *United States v. Bliss*, 667 F.Supp. 1298, 1310 (E.D. Mo. 1987).

Pursuant to § 107(b) Circuit Express cannot be responsible for an act or omission of a third party which may have caused or contributed to CERCLA liability. Circuit Express did not cause the environmental problems at the site nor any of the hazardous constituents which may have been found at the site. Indeed, as of October, 1993, Circuit Express has operated at 229 South Clark Drive. The investigations conducted at the South Indian Bend Wash ("SIBW"), including the site at 229 South Clark which Circuit Express has operated since October of 1993, also indicate that Circuit Express should not be included in the "Superfund" investigation because it did not utilize any of the so called contaminants which have been found either in the soil or in the groundwater. Instead, all of the manifests for Circuit Express show that it did not utilize any hazardous substances that are not connected to the SIBW contamination in any way. A closer examination of the documents in this matter helps to establish this conclusion.

Also, the fact that Circuit Express may have previously operated at a site wherein some disposal (not at issue in the Superfund investigation) may have occurred through other parties does not establish any nexus between the role of Circuit Express and the decision to dispose of hazardous waste. For example, in *Snediker Developers Ltd. Partnership v. Evans*, 773 F.Supp. 984 (E.D. Mich. 1991), the Court held that defendants who merely owned property during the time when contamination spread were not liable. The Court noted that defendants did not own the facility currently or at the time of disposal. The Court also held that a person may not be held liable as an operator unless there was a nexus between the role as an operator and the decision to dispose of hazardous waste. Therefore, an operator who became involved with the site seven (7) years after the disposal was found to be not liable under CERCLA.

In addition, as noted above, the EPA must have some evidence that Circuit Express released the alleged hazardous substances which are the subject of the proposed Superfund cleanup. In this case, the cleanup is directed at volatile organic compounds ("VOCs") such as PCE and TCE. There is absolutely no evidence that Circuit Express ever utilized TCE, PCE or any other VOC during the operation at the previous location at Fifth Street or since 1993 at its operation at 229 South Clark Drive, Tempe, Arizona. The documents in the possession of the EPA also establish this fact.

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1. One of the documents is entitled, "Technical Memorandum: Circuit Express Site Inspection South Indian Bend Wash Phase 11, Stage 1 RI / FS May 1991." CH2M HILL under a contract No. 68-W9-0031 with EPA prepared this report. We have reviewed the document and have highlighted the following references in the report with comments.

Page 1: Section entitled, "Disclaimer"

The report contains conclusions and recommendations for possible further action at a facility within the Indian Bend Wash Superfund site.

Comment: This section implies that the Circuit Express facility is targeted based on the report findings.

Page 2 and 3: Section entitled, "Purpose and Scope"

Specifically, the following information is being obtained:

1. Identifying facilities where releases of hazardous materials/wastes may have occurred.
2. Identifying the type and quantity of hazardous materials/wastes that may have been released at each facility.
3. Investigating the extent of contamination.
4. Identifying and describing contaminant pathways.

Comment: If the intent was to accomplish the above, the report fails to meet its goal. The EPA did not identify the type or quantity of hazardous materials/wastes that may have been released. The operative words in this statement are, "may have." The EPA did not establish the extent of contamination, did not identify contaminant pathways and did not determine if hazardous materials/wastes were actually released.

Page 5: Section entitled, "Circuit Express Facility Description"

The fifth paragraph describes an incident wherein the ADEQ inspected the Fifth Street Facility. In response to an anonymous complaint that drums of hazardous waste were being stored on the site for long periods of time, ADEQ inspected the facility on October 20, 1987.

Comment: The Articles of Incorporation of Circuit Express were filed on October 1, 1987 and approved by the Arizona Corporation Commission on October 22, 1987. Since the inspection was made on October 20, 1987, the complaint was actually made several days before Circuit Express was incorporated. The inspection took place two days before the Arizona Corporation Commission approved the filing. The previous operator, Megatronics, had obviously left the drums of waste. Circuit Express then agreed to treat the drums and dispose of the waste. While Circuit Express had no responsibility to clean up the drums left by Megatronics, Circuit Express did remedy this problem at the corporation's expense. This cleanup was completed

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in March 1989, after many discussions with the ADEQ regarding method and the process of the cleanup. **None of the issues, however, is relevant to alleged soil contamination by other companies in the area or contamination by ECM. Indeed, the drums that were left at the site had nothing to do with a release or with soil contamination.**

Page 7: Section entitled, "Circuit Express Facility Description"

The first paragraph on page 7 states that in 1988, EPA conducted a Preliminary Assessment (PA) of the Circuit Express facility because of possible disposal activities that could have resulted in releases of hazardous waste to the environment (EPA, 1988). The EPA concluded the site should be included on the NPL due to:

- ECM's disposal to dry well in February 1984.
- Regional hydrogeologic characteristics indicate a strong potential for contaminants to migrate into groundwater.
- A significant target population exists for groundwater route.

Comment: The EPA concluded that Electronic Circuitry Manufacturing ("ECM") caused the contamination on site. It is also interesting to note that while ECM dumped solution in a dry well, the owners of ECM, Mike Antellocy, Hank Garner and Jeffrey Foster are not listed by the EPA as PRPs. This is true even though these individuals were apparently observed dumping what appeared to be rinse-water from a copper bath.

Please note in the middle of page 7:

"there is evidence indicating that highly toxic and persistent hazardous waste materials have been illegally disposed of onsite [ECM's disposal to dry well, February 1984]".

Please note middle of the last paragraph on page 7:

"During one sampling episode, the City of Tempe Industrial Wastewater Department observed ECM personnel disposing of copper rinse-water solution into the dry well that is located on the property (February 16, 1984)

In the same paragraph, there is an allegation that ECM, Megatronics and Circuit Express regularly exceeded their discharge permit for copper and lead concentrations in the wastewater discharge. **None of this information pertains to the SIBW contamination. Instead, it is a matter of public record with the City of Tempe that Circuit Express did not utilize any VOCS in it's production process.**

Moreover, and most importantly, Circuit Express leased the facility at Fifth Street. There is absolutely no direct or even indirect connection between Circuit Express and ECM. Since Circuit Express did not own the facility at Fifth Street but simply operated it for a period of time, there can be no CERCLA liability for the actions of ECM since there is no established connection between ECM and Circuit Express.

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Page 9: Section entitled, "Facility Processes" Top of the page.

The first paragraph states: "Waste streams from the Circuit Express facility have been either disposed of into the Tempe sewer system, or have been transported offsite by a waste hauler."

Comment: Since the disposal of hazardous waste has been done in compliance with federal and state law, Circuit Express is not connected to SIBW contamination in any way.

Page 10: Section entitled, "Site Inspection Summary"

The middle of the second paragraph states: At the time of the inspection, the pH monitor for this pretreatment system read pH 7, indicating that the pretreatment system was apparently functioning as intended.

Comment: This was a positive observation that the Circuit Express operation was in compliance.

In the same paragraph, it also states that it was obvious that spills had occurred along the plating lines and at the ammonium etch tanks.

Comment: This observation may lead the reader to conclude that the spill (that was not substantiated) could be detrimental to the soil. As a matter of fact, however, the Circuit Express Facility Closure Plan (that was certified some two and one half years later through the use of actual soil samples) certifies that the soil was not contaminated.

Page 10: Section entitled, "Available Data"

Five soil gas samples were obtained in the vicinity of the Circuit Express facility in 1988. These solvents may be related to the possible disposal of VOC's to the closed dry well located to the south end of the building.

Comment: The report concludes that the readings may be related to the possible disposal of VOC's to the closed dry well located at the south end of the building. As noted above, Circuit Express never disposed of anything to the dry well. Nor did Circuit Express ever use any VOCs in the manufacturing process. At the time Circuit Express was incorporated and began operations, the dry well had already been capped for over two (2) years. Indeed, one of the previous tenants at the Fifth Street facility, ECM, was forced to cap the well by the City of Tempe.

Page 10: Section entitled, "Conclusions"

Electronic Circuitry Manufacturing's past disposal practices of disposing of copper process wastewater solutions into the dry well along with the amount and type of chemicals that **are normally** used in circuit board manufacturing indicates that the potential for subsurface contamination exists.

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Comment: Circuit Express cannot be a PRP based on conclusions that the soil was allegedly contaminated by a company named Electronic Circuitry Manufacturing. There is no direct or indirect nexus or connection between Circuit Express and ECM.

Page 11 and 12: Section entitled, "Additional Data Requirements"

The analytical results of the 1988 soil gas sampling indicate that there may be subsurface contamination present at the Circuit Express facility. The paragraph indicates that additional tests and analysis should be performed. Near the end of the paragraph the letter states, "in addition, to these laboratory analyses, a thorough visual description of the soils beneath the plating shop should be completed."

Comment: The EPA named Circuit Express as a PRP based on 1988 tests. However, during the closure of the Fifth Street facility, an elaborate soil testing program was completed that demonstrated that the soil was clean.

2. An additional document entitled, "**Facility Closure of Circuit Express facility at 2149 East Fifth Street,**" has been provided for your information.

This report delineates the activities and the results of the formal RCRA closure of the facility on August 1, 1993. The report represents the RCRA closure for EPA ID NO. AZD982373730. The procedures, photos, testing, and results of the soil sampling are all provided.

The results of the testing indicate that the soil has not been contaminated.

3. A document entitled, "**Technical Memorandum: Former Megatronics Facility 229 South Clark, Site Inspection South Indian Bend Wash Phase 11, Stage 1 RI/FS, dated May 1991.**" CH2M HILL under a contract No. 68-W9-0031 with EPA prepared this report.

Page 6: Section entitled, "Owner, Land Use, and Enforcement History"

There is no record of any history of enforcement actions at the former Megatronics facility at 229 South Clark Drive. However, adjacent facilities have reportedly had such actions.

Comment: The only adjacent facility to use chemicals was Prestige Cleaners which is located to the northeast of the Clark Drive facility.

Page 9: Section entitled, "Summary of site Inspection"

The building and immediate surroundings were vacant at the time of the inspection. No obvious evidence of chemical spillage in the building was observed.

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Comment: This is a positive comment that indicates that the building is without contamination.

Another part of this section deals with a 12 foot by 20-foot previously fenced compound at the southeast corner of the site. This paved area had probably been used to store drums of solvents. There was evidence of staining on the asphalt surface, possibly from spillage.

Comment: This is another comment made that could be construed as negative. In addition, the report does not indicate which tenant is suspected to have caused the spill if in fact a release did occur.

Page 9: Section entitled, "Available Data"

Soil gas samples were extracted and analyzed during 1988 and 1990 as directed by EPA Region IX. The results of these analyses are presented in Table 1.

Comment: The tests were performed in 1988 and Circuit Express did not occupy the building until April 1993.

Page 9: Section entitled, "Conclusions"

Based on the soil gas samples collected in 1988 and 1990, there is subsurface contamination of PCE at the former Megatronics site. The highest concentrations were detected along the eastern edge of the property in both 1988 and 1990. Manufacturing processes at the former Megatronics site reportedly did not use PCE. However, the Unitog site borders the property on its northeast side. It is likely, though not certain, that the PCE concentration detected at the former Megatronics site migrated from the Unitog facility.

Comment: This conclusion shows that neither Circuit Express nor the owners of the building are involved in any alleged PCE contamination.

4. A document entitled, "**Volume 1, South Indian Bend Wash, Phase 11, RI / FS, Work Plan, June 9, 1989.**" CH2M HILL under a contract No. 68-01-7251 with EPA prepared this report.

This report contains the work plan for the task of conducting a Remedial Investigation. It includes the selection of sites for testing and the plan to collect and analyze the data. This document is intended to identify the plan that was used to prepare the Technical Memorandum of May 1991 that dealt with site inspections at 2149 East Fifth Street and 229 South Clark Drive. Excerpts from the report have been highlighted and comments stated below.

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Page 2-7: Section 4.1 entitled, "Facilities Selected for Inspection"

Compilation and analysis of existing data has led to the development of a list of sites or facilities for which site inspections will be conducted. See table 2-1, which identifies Megatronics / Circuit Express as one of the selected sites.

Comment: The work plan identifies a focused investigation of the site at 2149 East Fifth Street. However, it does not identify the former Megatronics facility at 229 South Clark Drive.

Page 2-47: Section 11.0 entitled, "Focused Investigation Circuit Express Facility"

From 1965 to the present, Circuit Express has operated a manufacturing facility in the SIBW study area (Figure 2). Industrial processes reportedly include circuit board manufacturing. Review of existing data indicates previous tenants may have disposed of waste solvents in wells located on the facility. In addition, tests of soil vapor sampling indicate concentrations of VOC's occur in the vicinity of the Circuit Express facility. These data indicate releases of waste materials into the environment have occurred at the Circuit Express.

Comment: The report has many misleading and untrue statements that could lead the reader to draw the wrong conclusions. The first statement is that Circuit Express has been operating since 1965. This is, of course, false since Circuit Express was not incorporated until October of 1987.

The second statement is clearly accurate wherein the report states that previous tenants may have disposed of waste in wells located on the facility.

The third statement is misleading and false because it indicates that releases of waste materials into the environment have occurred at Circuit Express. The statement should be that releases have occurred at the site at 2149 East Fifth Street by a former tenant that is not connected to Circuit Express.

The report also continues to refer to the site as the Circuit Express facility. This leads the reader to conclude that they are only dealing with Circuit Express and not with the site that has been occupied by numerous, unrelated tenants.

Page 2-48: Section 11.2.1 entitled, "Construction of Shallow Monitoring Well"

A minimum of one shallow monitoring well will be constructed near the former disposal facilities at the DCE Circuit Site.

Comment: This section does not make sense because it relates to DCE Circuits.

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General Comments:

The report discusses all of the wells and tests that will be conducted. Circuit Express has not seen any results of the tests or samples.

5. A document entitled, "**Volume 11, South Indian Bend wash, Phase 11, RI FS, Work Plan, June 9, 1989.**" CH2M HILL under a contract No. 68-01-7251 with EPA prepared this report.

This document is primarily Appendices of the Work Plan outlined in Volume 1. However, there is reference to Circuit Express and a reference to property at 229 South Clark Drive on Page A-57 and Tables A-12.13, and A-12.14.

The information presented is incorrect. The section on page A-57 describes the location on Fifth St and Clark Drive as the Megatronics facility (formerly Circuit Express). The Table A-12.14 identifies Megatronics as conducting circuit board manufacturing in the Clark Drive facility, which is also incorrect.

6. A document entitled, "**Draft Technical Memorandum, Soil gas Survey Results, South Indian Bend Wash, RI / FS, Tempe, Arizona, December 1988.**" CH2M HILL under a contract No. 68-01-7251 with EPA prepared this report.

This document describes soil gas sample, analysis, and interpretation. There are numerous references to facilities at Fifth Street and Clark Drive. These are made reference in Table 6, 7, 8, 9, and 10 on Page 20 through 24. In addition, table B-3 on Page B-8.

These tables report the levels of VOC's at these two sites, based on tests performed in early 1988. Circuit Express has summarized the results on the attached summary sheets for your information.

Summary:

This report written by the EPA implicates Circuit Express for all of the past practices of ECM. Moreover, the report even implicates Megatronics even though there was no evidence that it violated any regulations regarding soil contamination.

All of the conclusions throughout the report are based on pre-Circuit Express events. Circuit Express is mentioned only because it happens to have leased the same building previously leased by ECM. In addition, the implication that the soil and groundwater have been contaminated by Circuit Express due to exceeding the Tempe wastewater limits is unconscionable. The issues between the City of Tempe and Circuit Express relate solely to exceeding certain limits set forth in the waste water permit and are not related in any way to soil or ground water contamination through VOCs.

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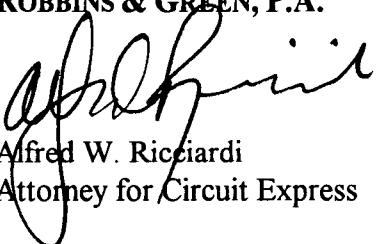
The report indicates that since Circuit Express manufactures circuit boards that it is guilty of soil and groundwater contamination. This is based on the fact that ECM manufactured circuit boards and dumped waste down the dry well, and Megatronics manufactured circuit boards and exceeded the water permit limits. Circuit Express never owned the facility on Fifth Street. Circuit Express only purchased the property on Clark Drive for fair value and after a Phase I report. Circuit Express is not responsible for what someone allegedly did on Fifth Street in 1984.

It appears that the only thing in the technical memorandum that Megatronics did wrong was to lease a building that was occupied by Electronic Circuitry Manufacturing. While Megatronics did have violations of their city permit for allowable discharge of copper and lead in the wastewater, **these violations are unrelated to contaminated soil and the accusations brought by the EPA for the SIBW.** Moreover, there does not appear to be any connection between Electronic Circuitry Manufacturing and Megatronics.

Based upon the foregoing, Circuit Express requests that the United States Environmental Protection Agency remove Circuit Express from the list of potentially responsible parties and/or alleged "groundwater stake holders." While Circuit Express does not challenge the EPA's right to investigate this Superfund site, the cause of the contamination is volatile organic compounds such as PCE. While such compounds are used in the dry cleaning process, no such compounds were ever utilized by Circuit Express in the manufacture of printed circuit boards at either site. All of the metals that were used in the manufacture of printed circuit boards have been manifested and tested by the City of Tempe. There is nothing in the records from the City of Tempe or the records maintained by Circuit Express that indicate that any VOCs were ever utilized in the manufacturing process.

Since there is no factual evidence nor legal basis to include Circuit Express as a PRP, this is request that the EPA send a notification to Circuit Express that it is no longer either a PRP or a "groundwater stake holder" in the South Indian Bend Wash Superfund Site.

Very truly yours,
ROBBINS & GREEN, P.A.



Alfred W. Ricciardi
Attorney for Circuit Express

AWR:bfk
Enclosure

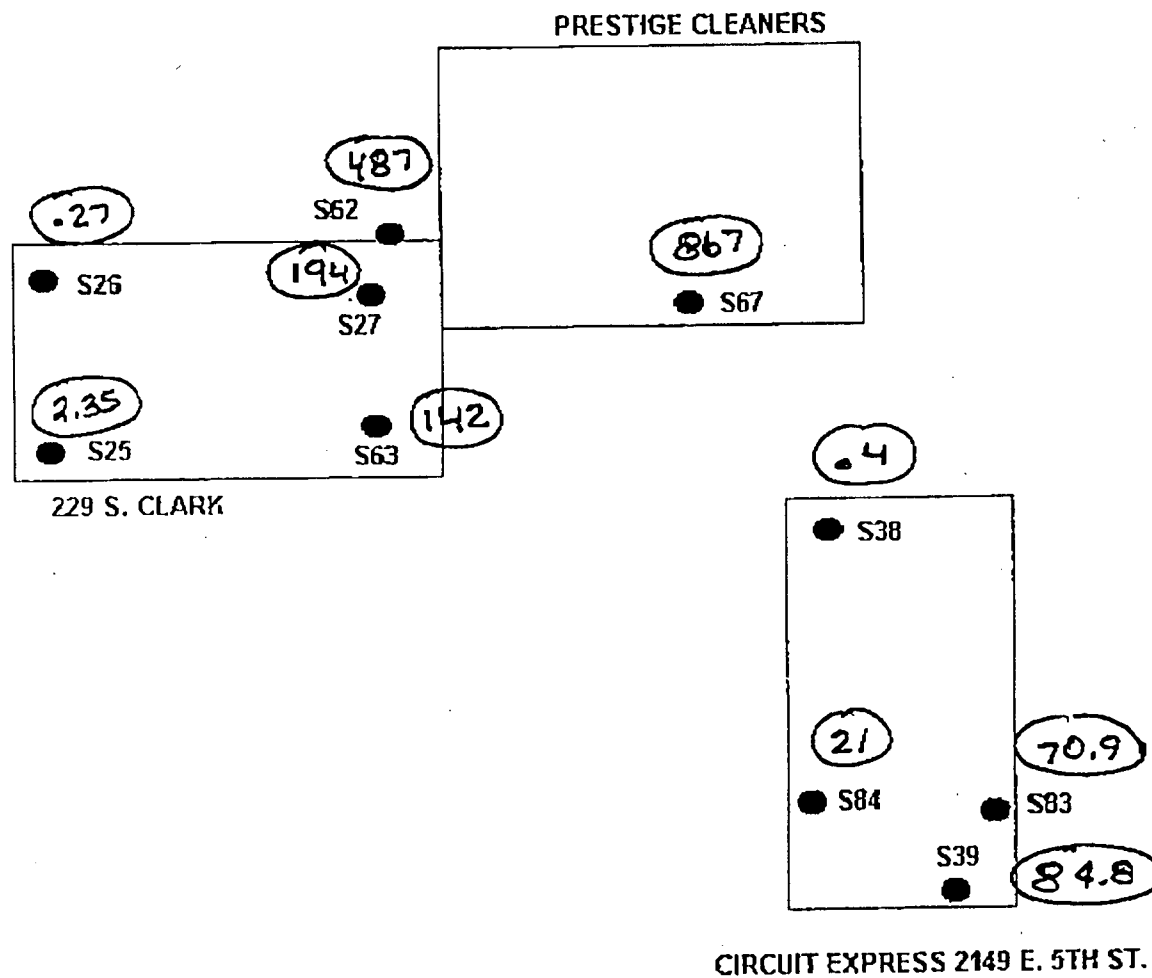
RATING
 LOCATION
 SITE CODE
 VNNYL CHLORIDE
 1,1-DCE
 1,1,1-TCA
 TCE
 PCE
 BENZENE
 TOLUENE
 ETAYBENZENE
 META & PARA - XYLENES
 ORTHO - XYLENES
 METHANE

229 S. CLARK DR.					PRESTIGE CLEANERS	
ND	1-10	100-500	100-500		100-500	100-500
NW	SW	NE IN PARKING LOT	SE IN DRIVE		BEHIND DUMPSTER	NE OF OUR BLDG.
<u>S26</u>	<u>S25</u>	<u>S27</u>	<u>S63</u>		<u>S62</u>	<u>S67</u>
ND	ND	ND	ND		ND	ND
ND	ND	ND	0.25		ND	0.02
ND	0.03	0.02	26.10		ND	0.79
ND	ND	0.25	0.27		0.22	8.22
0.27	2.38	194	142.00		487	867.00
ND	ND	ND	0.02		0.01	0.14
0.33	0.05	0.03	0.02		0.05	0.07
0.07	0.01	0.02	ND		0.01	0.050
0.21	0.04	ND	0.01		0.07	ND
0.62	0.55	0.01	0.02		0.02	ND
0.7	0.6	1.3	ND		ND	ND

RATING
 LOCATION
 SITE CODE
 VNNYL CHLORIDE
 1,1-DCE
 1,1,1-TCA
 TCE
 PCE
 BENZENE
 TOLUENE
 ETAYBENZENE
 META & PARA - XYLENES
 ORTHO - XYLENES
 METHANE

2149 E. 5TH ST.			
ND	10-100	10-100	10-100
NW	SW	S MIDDLE OF PARKING LOT	SE
<u>S38</u>	<u>S84</u>	<u>S39</u>	<u>S83</u>
ND	ND	ND	ND
ND	3.15	3.03	0.88
0.04	33.9	58.7	14.7
ND	ND	1.1	31
0.4	21	84.8	70.9
0.01	0.02	0.02	0.01
0.02	0.03	0.06	0.01
ND	0.01	0.02	ND
0.01	0.02	0.06	ND
0.11	0.01	0.08	0.01
ND	ND	ND	ND

X



PCE N8/L 1988